IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 869 OF 2007

Jamuna Darshan Co-operative
Housing Society Ltd. ...Petitioners
V/s.
The Municipal Corporation of
Greater Mumbai & Anr. ...Respondents

Mr.S.V. Murti i/b. Ms.Sukeshi Bhandari for the Petitioners.
Mr.N.A. Shaikh for Respondent-BMC.

CORAM : V.M. KANADE, J.

DATED : APRIL 17, 2007

P.C. :-

1. Heard the learned Counsel for the petitioners and the learned Counsel for the Corporation.

2. The petitioners are seeking an appropriate writ, order or direction from this Court for setting aside the Warrant of Attachment which was issued by the Corporation for non-payment of property taxes for the period from 1.4.2002 to 30.9.2002 and 1.4.2003 to 30.9.2003. It is stated in the Warrant of Attachment that the property taxes to the tune of Rs.48,122/- have not been paid and therefore, the said Warrant of Attachment is issued.

3. The learned Counsel for the petitioners submitted that the petitioners are a registered Co-operative Housing Society and they are in continuous and exclusive use, possession and occupation of land admeasuring 2048.9 square meters on Final Plot No.774 of TPS Scheme III (Bom) situated at Borivli (West), Mumbai -92. It is the case of the petitioners that there is a plot of land at the rear portion of the building which is constructed on the said plot admeasuring 206.66 square meters. It is the case of the petitioners that the said plot of land at the rear portion of the building is a part and parcel of the entire plot admeasuring 2048.9 square meters. It is the case of the petitioners that the builder who is the owner of the land has not conveyed the property in favour of the petitioners and that the suit which is filed by the petitioners against respondent no.2 is still pending. It is submitted that the petitioners came to know that about Warrant of Attachment since it was affixed to the gate of the building. The petitioners thereafter made a representation dated 25th May, 2004 stating therein that

they were deemed to be the owners of the said land and that the name of the original owner should be deleted and their name be included in his place.

4. The learned Counsel on behalf of the Corporation submitted that this representation has not yet been decided by the Corporation and in the meantime, the Warrant of Attachment was issued and pasted on the gate of the building.

5. The learned Counsel for the petitioners submitted that he is willing to deposit an amount of Rs.48,122/- which is mentioned in the Warrant of Attachment within a period of one week from today. He submits that therefore, the Warrant of Attachment may be set aside and a direction be given to the Corporation to decide the representation which has been preferred by the petitioners.

6. The learned Counsel for the Corporation has submitted that if the petitioners are claiming to be the owners, they should also deposit the property taxes for

the period after 30th September, 2003. It is submitted that the taxes without penalty come to Rs.1,67,733/- and the balance amount is a penalty which has been imposed by the Corporation for non-payment of the property taxes in time.

7. The learned Counsel for the petitioners submits that he is willing to deposit the principle amount of Rs.1,67,733/- within a period of five months in five equal instalments.

8. In the present case, the suit which is filed by the petitioners is already pending in the City Civil Court. The petitioners are claiming to be the owners of the said rear portion of amount which is behind the building.

9. In my view, since the representation which is made by the petitioners is not yet decided, it would be appropriate if a direction is given to the respondent no.1 to decide the representation, as expeditiously as possible and in any case, within a period of three

months. Order accordingly.

10. The petitioners are directed to deposit an amount of Rs.48,122/- within a period of one week from today. The balance amount of Rs.1,67,733/- shall be paid within a period of five months in five equal instalments.

11. So far as the penalty is concerned, the petitioners undertake to pay the penalty as imposed after the representation which is made by the petitioners is decided by the respondent Corporation and after the appropriate orders are passed on the said representation.

12. In view of the statement made by the learned Counsel for the petitioners, on instructions from his client, the impugned order of Warrant of Attachment is set aside. The petitioners to make payment of Rs.48,122/- within one week from today and the amount of Rs.1,67,733/- to be paid without prejudice to their rights and contentions which they have raised in their

representation with an undertaking to pay the balance amount of penalty if imposed by the Corporation subject to final decision being passed in the reference and/or appeal which may be filed by the petitioners against the said order of reference. The Corporation to treat the reference as an application under Section 167 of the Bombay Municipal Corporation Act.

13. Writ Petition is accordingly allowed in the above terms. Rule is made absolute in the above terms.

14. The petitioners to get the petition numbered within four weeks. If the petition is not numbered within time, the order passed shall stand vacated without further reference to this Court.

(V.M. Kanade, J.)